

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

rj-m05

RAFAEL TORMES-ORTIZ

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDENT

CASE NO: CV-97-1618 (JP)

CR-88-253 (GG)

**MOTION PURSUANT TO THE RECENT COURT
ORDER ISSUED ON SEPTEMBER 29TH, 2006**

TO THE HONORABLE COURT:

COMES NOW defendant **RAFAEL TORMES-ORTIZ** through subscribing **ATTORNEY** who very respectfully alleges and prays:

On **September 29th, 2006**, this Honorable Court issued an order in which the appearing defendant was ordered to inform this Court the status of the present pending matters in the above captioned cause of action. In harmony with said order the appearing defendant informs this Honorable Court of the pending motions to be entertained by Court.

On or about **January 19, 2001** plaintiff's **28 U.S.C. §2255** motion was remanded back to this court for final resolution. to this date close to **six (5) years** have elapsed since this motion was filed and **no date** has been set for an Evidentiary Hearing. On **May 13, 2005**, plaintiff filed a motion to further amend and supplement his motion filed in **2001**. This amendment was based on the recent Supreme Court decisions in the cases of **Blakely v. Washington**, 542 U.S. 296 (2004) and **United State v. Booker**, 243 U.S. 220 (2005). These

cases have held that the **Sixth Amendment** of the United States Constitution is violated by the imposition of an enhanced sentence under the United State Sentencing Guidelines when such enhancement is based on facts, other than prior convictions, determined by the sentencing Judge and which were not proved beyond a reasonable doubt by a jury or admitted by the defendant.

Since the initial filing, a hearing date has not been set. The plaintiff thus asserts that he is entitled to a hearing specially since this motion was filed nearly **six (6)** years ago. The merits of Plaintiff's allegations have been well substantiated in all his previous motions, and the plaintiff sees no reason to further delay this case. For this reason plaintiff respectfully requests this Honorable Court schedule a Evidentiary Hearing in the referenced matter as soon as the Court's calendar may allow to.

It is further informed that the appearing defendant is interested in that the Court further entertain any pending motion (s).

WHEREFORE, it is most respectfully requested that this Honorable Court take knowledge of the aforementioned.

I HEREBY CERTIFY that on **October 9th, 2006**, I electronically filed the foregoing motion with the Clerk of the Court using the **CM/ECF** system, and that notice of this motion has been sent by regular mail carrier to **ROSE A. BRICENO** at the U.S. Department of Justice, Criminal Division - Bond Building, Narcotics/Dangerous Drug Section 10th & Constitution Ave. NW, Washington, DC 20530, **NEIL GALLAGHER** at the U.S. Department of Justice, Criminal Division, Narcotics and Dangerous Drug Section, POB 27312, Washington, DC 20038, and Rafael Tormes Ortiz, Reg. #44128-080, USP/Max, POB

8500, Florence, CO 81226-8500.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 9th day of October of the year 2006.

By: /s/ **PETER JOHN PORRATA**
#128901

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